

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AXIS INSURANCE COMPANY a/a/o
ZOLL MEDICAL CORPORATION and
ZOLL SERVICES LLC,

Plaintiffs,

v.

BARRACUDA NETWORKS, INC. and
SONIAN INC.,

Defendants,

v.

AXIS INSURANCE COMPANY a/s/o
FUSION LLC,

Rule 20 Parties.

Civil Action No. 1:20-cv-11997-NMG

**DEFENDANTS' ASSENTED-TO MOTION TO CONTINUE TRIAL TO
OCTOBER/NOVEMBER 2024**

Defendants Barracuda Networks, Inc. and Sonian, Inc. ("Defendants"), with the assent of Plaintiff Axis Insurance Company ("Axis"), respectfully move this Court to continue the trial currently scheduled for August 5, 2024 because its designated expert is undergoing cancer treatments and will be recovering from surgery during the currently-scheduled trial date. In further support for the motion, Defendants state as follows:

1. On October 26, 2023, this Court set the current case schedule, requiring fact discovery to be complete by January 31, 2024, affirmative expert reports disclosed by February 15, 2024, rebuttal expert report disclosed March 15, 2024, expert discovery complete by March 30, 2024, summary judgment filed by April 19, 2024, and trial on August 5, 2024. [Dkt. No. 137].

2. The Parties complied with this schedule. They completed fact discovery by January 31, 2024. Barracuda disclosed its affirmative expert on February 15, 2024. Axis disclosed its rebuttal experts on March 15, 2024.

3. However, before the deposition of the experts could take place, Barracuda's expert, Kathy Fitzgerald, was informed that she required significant surgery to remove cancer from her breast. *See Aff. of Kathleen Fitzgerald* ¶ 3. Ms. Fitzgerald underwent surgery on April 5, 2024. *Id.*

4. As a result, the Parties did not complete expert depositions by March 30, 2024. Furthermore, because Ms. Fitzgerald was designated an affirmative expert, Plaintiff sought to depose her before Defendants deposed Plaintiffs' rebuttal experts.

5. Without expert depositions, the Parties proceeded with the case schedule. Barracuda filed its summary judgment motion on April 19, 2024, without reliance on Ms. Fitzgerald's opinion. [Dkt. Nos. 173, 174]. Axis's response is due on May 10, 2024, and any reply brief must be filed by Defendants on May 24, 2024, if leave is granted.

6. On or around April 18, 2024, Ms. Fitzgerald received her pathology reports from her surgery. *Id.* ¶ 4. Based upon her current treatment plan, Ms. Fitzgerald would be available for her deposition at the end of May or the beginning of June. *Id.* ¶ 5. However, Ms. Fitzgerald is currently scheduled to undergo reconstruction surgery on July 15, 2024. *Id.* ¶ 4. Her reconstruction surgery has an 8-week recovery period, which overlaps with the current trial date. As a result, Ms. Fitzgerald is not available for the current trial date. *Id.* Additionally, Ms. Fitzgerald is scheduled for another reconstruction surgery in late November or December, with the same recovery period. *Id.*

7. Given the recovery period for Ms. Fitzgerald's July 15 surgery and her upcoming late November/December surgery, Ms. Fitzgerald is available for trial in October and early November 2024. *Id.* ¶ 5.

WHEREFORE, Defendants, with the assent of Plaintiff, respectfully request that this Court continue the August 5, 2024 trial date to a date in October or November 2024.¹

Respectfully submitted,

BARRACUDA NETWORKS, INC,

By their attorneys,

/s/ Michael R. Stanley

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¹ Defendants do not make this motion lightly given the Court's prior order that there will be "no further extensions." [Dkt. No. 137]. However, given the serious health issue related to Defendants' affirmative expert, Defendants respectfully ask for relief from this Court.